

APR 04 2008Attorney Docket: 01377
U.S. Application No. 10/020,779 Art Unit 3622
Response to January 9, 2008 Office Action**REMARKS**

In response to the Office Action dated January 9, 2008, the Assignee respectfully requests reconsideration based on the above amendments and on the following remarks.

Claims 1-6, 8, and 17-20 are pending in this application. Claims 7 and 9-16 were previously canceled without prejudice or disclaimer.

Rejection of Claims 1-6, 8 & 17-20 under 35 U.S.C. § 103 (a)

Claims 1-6, 8, and 17-20 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over U.S. Patent 6,463,585 to Hendricks, *et al.*

Claims 1-6, 8, and 17-20, however, are not obvious over *Hendricks*. These claims recite, or incorporate, many features that are not disclosed by *Hendricks*. Independent claims 1 and 17, for example, recite “determining, at the network provider’s server, whether the advertisement and the different advertisement are equal in time length” (emphasis added). Independent claims 1 and 17 also recite “searching, by the network provider, to determine a time of broadcast of a previous advertisement relating to a same type of product as the different advertisement” and “when the advertisement is categorized as overrideable, and when the advertisement and the different advertisement are equal in time length, then replacing the advertisement with the different advertisement, such that the different advertisement is inserted into the programming content.”

Hendricks cannot obviate at least these features. *Hendricks* receives “programs watched information” to “develop a program line-up.” U.S. Patent 6,463,585 to Hendricks *et al.* (Oct. 8, 2002) at column 11, lines 42-44 and 51-54. *Hendricks* also mentions a remote control and “clickstream data.” *Id.* at column 10, lines 38-60 and at column 20, lines 26-27. As *Hendricks* explains, this data is used to develop a “switching plan” for different “feeder channels” that carry advertising and programming. *See id.* at column 6, lines 1-13. When a programming break

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occurs, the terminal is switched amongst the feeder channels, based upon viewing habits and demographics. *See id.* at column 6, lines 24-42. As *Hendricks* explains, “[c]areful management of the feeder channels, including their dynamic switching, and control of the advertising airing on the feeder channels at any given time can greatly increase the both the advertiser’s likelihood of reaching an interested viewer, as well as the likelihood a viewer is interested in a specific advertisement.” *See id.* at column 4, lines 43-48.

Hendricks fails to teach or suggest many of the features of the independent claims. The independent claims, for example, recite “*determining, at the network provider’s server, whether the advertisement and the different advertisement are equal in time length.*” The Office alleges that *Hendricks* teaches these features, but the Assignee cannot agree. The Office, for example, generically cites to “FIG. 29.” The Office, though, makes no specific citation to any block of this flowchart. The Assignee has again thoroughly reviewed FIG. 29 and its supporting disclosure at column 70, line 31 through column 71, line 3. Nowhere does FIG. 29, or its supporting disclosure, teach or suggest “*determining, at the network provider’s server, whether the advertisement and the different advertisement are equal in time length.*” FIG. 29, quite simply, fails to disclose or suggest what the Office alleges.

The Office also cites to column 33, lines 18-42. These passages discuss an “ad playbill input” that specifies which advertisement is aired in a time slot, its run time, and the storage location. *See id.* at column 33, lines 37-40. So, even though the “run time” of an advertisement is mentioned, nowhere do these passages teach or suggest “*determining, at the network provider’s server, whether the advertisement and the different advertisement are equal in time length.*” The mere mention of “run time” does not obviate the claimed determination.

The Office also cites to column 67, lines 45-52. These lines discuss an “Advertisements File that contains ..., length and type of advertisement” for every advertisement. *See id.* at column 67, lines 48-50. Again, even though the “length” of an advertisement is saved, nowhere do these passages teach or suggest “*determining, at the network provider’s server, whether the*

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advertisement and the different advertisement are equal in time length." Again, the mere mention of "length" of an advertisement does not obviate the claimed determination.

Moreover, *Hendricks* fails to teach or suggest even more claimed features. The independent claims, for example, also recite "*searching, by the network provider, to determine a time of broadcast of a previous advertisement relating to a same type of product as the different advertisement.*" The Office again alleges that *Hendricks* teaches these features, but the Assignee cannot agree. The Office, for example, cites to column 33, lines 18-42. These lines discuss a national "switching plan" that may be overridden for the insertion of local advertising. *See id.* at column 33, lines 23-27. The local cable headend may insert a local advertisement on a feeder channel. *See id.* at column 33, lines 27-29. The operations center receives "programs watched data" and "targeted advertisements watched data" for billing and for future ad campaigns. *See id.* at column 33, lines 31-33. An "ad playbill input" specifies which advertisement is aired in a time slot, its run time, and the storage location. *See id.* at column 33, lines 37-40. Again, then, these passages fail to teach or suggest "*searching, by the network provider, to determine a time of broadcast of a previous advertisement relating to a same type of product as the different advertisement*" (emphasis added).

The Office also cites to column 34, lines 22-38. Again, though, the Assignee must respectfully disagree. These passages discuss a local system-specific switching plan that may be sent in advance of program signals. U.S. Patent 6,463,585 to *Hendricks, et al.* at column 34, lines 21-25. The system-specific switching plan may also be periodically sent to ensure receipt. *See id.* at column 34, lines 25-27. When an open "pod" exists in a feeder channel, or when "a local cable system is authorized to override national advertising," a local ad may be added to a feeder channel. *See id.* at column 34, lines 30-33. Again, then, these passages fail to teach or suggest "*searching, by the network provider, to determine a time of broadcast of a previous advertisement relating to a same type of product as the different advertisement*" (emphasis added).

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The Office also cites to column 37, line 13 through column 39, line 65. These lengthy passages discuss an algorithm. As *Hendricks* explains, "Step 1" determines a ranking of an advertisement. *See id.* at column 37, lines 13-34. "Step 2" determines the category combination "that results in the highest overall ranking." *See id.* at column 37, lines 35-54. "Step 3" orders the programs from lowest ranking to highest ranking. *See id.* at column 37, lines 55-57. "Step 4" determines the number of programs that are assigned to a feeder channel. *See id.* at column 37, line 58 through column 38, line 15. "Step 5" multiplies a ranking by a "breakdown percentage." U.S. Patent 6,463,585 to *Hendricks, et al.* at column 38, lines 16-39. "Step 6" selects a "targeting category" from the iterations performed in Step 5. *See id.* at column 38, lines 39-42. "Step 7" finds the highest value of a calculation (" $(\text{rank}) * (\text{breakdown percentage})$ "). *See id.* at column 38, lines 43-53. "As a result of Step 7, the algorithm limits the number of advertisements that will be run. *See id.* at column 38, lines 53-56. "Step 8" performs another ranking calculation. *See id.* at column 39, lines 13-18. "Step 9" orders the advertisements. *See id.* at column 39, lines 18-21. "Step 10" selects an advertisement with the highest calculation. *See id.* at column 39, lines 22-27. "Step 11" assigns a grouping to the selected advertisement. *See id.* at column 39, lines 28-32. "Step 12" performs another ranking calculation. *See id.* at column 39, lines 33-35. "Step 13" reorders the advertisements to determine a default advertisement. *See id.* at column 39, lines 36-39. "Step 14" computes yet another calculation. *See id.* at column 39, lines 40-42. "Step 15" repeats steps 5-14. *See id.* at column 39, lines 43-44. "Step 16" selects a target category and assigns a rank to a program. *See id.* at column 39, lines 45-47. "Step 17" repeats steps 5-16 for another program. *See id.* at column 39, lines 48-49. "Step 18" assigns a program to a feeder channel. *See id.* at column 39, lines 50-54. "Step 19" assigns an advertisement. *See id.* at column 39, lines 55-57. These passages, then, do not teach or suggest "searching, by the network provider, to determine a time of broadcast of a previous advertisement relating to a same type of product as the different advertisement." These passages, quite simply, do not teach what the Office alleges.

The Office also cites to column 67, lines 53-62. These lines discuss an "Advertisement Selection" database and an "Advertisement Selection" file. U.S. Patent 6,463,585 to *Hendricks, et al.* at column 67, lines 53-56. The "Advertisement Selection" file "contains information on

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the advertisements that have been offered to each subscriber and keeps track of the ones that have been selected.” *Id.* at column 67, lines 56-59. The file also stores information on advertisements and categories of most interest to a subscriber. *See id.* at column 67, lines 59-62. These passages, then, do not teach or suggest “*searching, by the network provider, to determine a time of broadcast of a previous advertisement relating to a same type of product as the different advertisement.*” These passages, quite simply, do not teach what the Office alleges.

The Office also cites to column 70, line 29 through column 71, line 49. These lines discuss FIGS. 28 and 29. As *Hendricks* explains, programs watched information is gathered. *See id.* at column 70, lines 31-41. The programs watched information is grouped based on categories and time slots. *See id.* at column 70, lines 41-43. The software establishes the number of programs watched for a given time slot. *See id.* at column 70, lines 43-48. A matrix is then built. *See id.* at column 70, lines 48-56. Correlation algorithms may be used to weight categories. *See id.* at column 70, lines 57-63. Advertisements are then selected based on the weightings. *See id.* at column 70, line 63 through column 71, line 2. A grouping for each set top box is selected. *See id.* at column 71, lines 3-9. **“Each advertisement will subsequently be assigned a number of times that it will be shown in a given time frame.”** *See id.* at column 71, lines 18-20. **“This frequency of display may be based on various factors,”** such as the **“number of requests”** and costs paid by the advertiser. *See id.* at column 71, lines 20-23. Specific commercials are weighted and prioritized. *See id.* at column 71, lines 23-29. The weighted commercials are correlated. *See id.* at column 71, lines 30-36. The correlation results determine what advertisements and programming are distributed over a cable network. *See id.* at column 71, lines 37-40. **A billing database is updated, this allowing an advertiser to “track the costs and frequency of the advertisements targeted to specific set top terminals.”** *See id.* at column 71, lines 40-49.

Again, then, column 70, line 29 through column 71, line 49 do not teach what the Office alleges. These passages discuss **“a frequency of display”** that determines the **“number of times that [an advertisement] will be shown in a given time frame.”** *See id.* at column 71, lines 18-20 (emphasis added). These passages also discuss a billing database that allows an advertiser to

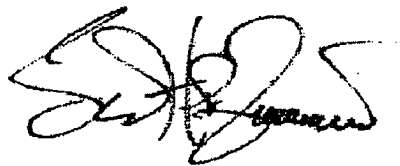
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"track the costs and frequency of the advertisements targeted to specific set top terminals."
See id. at column 71, lines 40-49. These teachings, though, are not equivalent to *"searching, by the network provider, to determine a time of broadcast of a previous advertisement relating to a same type of product as the different advertisement."* As the Office now realizes, these passages, quite simply, do not teach what the Office alleges.

Hendricks, then, does not obviate claims 1-6, 8, and 17-20. *Hendricks*, quite simply, fails to teach or suggest many features recited by independent claims 1 and 17. The respective dependent claims incorporate these same distinguishing features and recite additional features. One of ordinary skill in the art, then, would not think that claims 1-6, 8, and 17-20 are obvious. The Office is thus respectfully requested to remove the § 103 (a) rejection of these claims.

If any questions arise, the Office is requested to contact the undersigned at (919) 469-2629 or scott@scottzimmerman.com.

Respectfully submitted,



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